

EXHIBIT A

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Assigned for All Purposes
Judge Willian Claster
Dept. CX104

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

SONYA VALENZUELA, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

HOMAGE, LLC, an Ohio entity d/b/a
HOMAGE.COM,

Defendant.

Case No. 30-2023-01336826-CU-MT-CXC

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
INVASION OF PRIVACY ACT (“CIPA”)
AND RELATED CLAIMS**

INTRODUCTION

Defendant secretly enables and allows a third-party spyware company to wiretap and eavesdrop on the private conversations of everyone who communicates through the chat feature at www.homage.com (the “Website”). The spyware company then exploits and monetizes that data by sharing it with other third parties, who use the private chat data to bombard the unsuspecting visitor with targeted marketing.

Defendant does this without visitors’ informed consent. As a result, Defendant has violated the California Invasion of Privacy Act (“CIPA”), Cal. Penal Code § 630 *et seq.*

JURISDICTION AND VENUE

1. Defendant is subject to jurisdiction in this state under Penal Code Section 502(j), which provides that a person who causes, by any means, the access of a computer in California from another jurisdiction is deemed to have personally accessed the computer in California because Defendant placed a tracking “cookie” on Plaintiff’s device when Plaintiff visited Defendant’s website. Defendant is also subject to jurisdiction in this state under California’s “long-arm” statute found at California Code of Civil Procedure Section 410.10 because the exercise of jurisdiction over Defendant is not “inconsistent with the Constitution of this state or the United States.” Indeed, Plaintiff believes that Defendant generates a minimum of eight percent of revenues from its website based upon interactions with Californians (including instances in which the website operates as a “gateway” to sales), such that the website “is the equivalent of a physical store in California.” Since this case involves illegal conduct emanating from Defendant’s operation of its website targeting Californians, California courts can “properly exercise personal jurisdiction” over the Defendant in accordance with the Court of Appeal opinion in *Thurston v. Fairfield Collectibles of Georgia*, 53 Cal.App.5th 1231 (2020).

2. Venue is proper in this County in accordance with California Code of Civil Procedure Section 394(b) because “none of the defendants reside in the state.” As such, venue is proper “in any county that the plaintiff may designate in his or her complaint.”

PARTIES

3. Plaintiff is a resident of California. While physically within California during the class period, Plaintiff visited Defendant’s Website using a smart phone and conducted a brief conversation

1 with an agent of Defendant through the Website’s chat feature. Plaintiff was not advised that the chat
2 was monitored, intercepted, or recorded.

3 4. Defendant is an Ohio company that sells retro and vintage apparel from its website
4 nationwide.

5 5. Defendant owns, operates, and/or controls the above-referenced Website.

6 **FACTUAL ALLEGATIONS**

7 **A. The Right to Privacy Has Always Been a Legally Protected Interest in the United States.**

8 6. Since America’s founding, privacy has been a legally protected interest at the local,
9 state, and federal levels. *See Patel v. Facebook, Inc.*, 932 F.3d 1264, 1271–72 (9th Cir. 2019) (quoting
10 *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016)) (“Privacy rights have long been regarded ‘as
11 providing a basis for a lawsuit in English or American courts.’”); and *Eichenberger v. ESPN, Inc.*, 876
12 F.3d 979, 983 (9th Cir. 2017) (“Violations of the right to privacy have long been actionable at
13 common law.”).

14 7. More specifically, privacy protections are embedded in federal and state statutes, as
15 well as at common law. *See e.g., U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*,
16 489 U.S. 749, 763 (1989) (“The Ninth Circuit has repeatedly held that privacy intrusions may
17 constitute “concrete injury” for purposes of Article III standing”); *Van Patten v. Vertical Fitness Grp.*,
18 847 F.3d 1037, 1041–43 (9th Cir. 2017) (finding “concrete injury” where plaintiffs claimed that
19 unsolicited telemarketing calls “invade the privacy and disturb the solitude of their recipients”); *In re*
20 *Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 599 (9th Cir. 2020) (finding “concrete injury”
21 where Facebook allegedly tracked users’ “personally identifiable browsing history” on third party
22 websites); *Patel*, 932 F.3d at 1275 (finding “concrete injury” where plaintiffs claimed Facebook’s
23 facial-recognition technology violated users’ privacy rights).

24 8. In short, privacy is—and has always been—a legally protected interest in many
25 contexts, including specifically with regard to personal information and communications. Thus, a
26 defendant whose acts or practices violate consumer privacy inflicts an actionable “injury” upon an
27 individual.

28 **B. The Right to Privacy Includes The Right to Online Privacy.**

1 9. The right to privacy includes the right to anonymity online. *In Re Anonymous Online*
2 *Speakers*, 661 F.3d 1168 (9th Cir. 2011). Indeed, the “free exchange of ideas on the Internet is driven
3 in large part by the ability of Internet users to communicate anonymously.” *Doe v. 2TheMart.com*
4 *Inc.*, 140 F. Supp. 2d 1088, 1093 (W.D. Wash. 2001).

5 10. Consumer expectations regarding privacy reinforce the actionability of these rights.
6 According to Pew Research Center nearly all Americans believe it is important to (1) be in control of
7 who can get information about their online activities; (2) to not be tracked online without their
8 consent; and (3) to be in control of what information is collected about them.

9 **C. CIPA and Related California Privacy Laws.**

10 11. “‘[T]he right to control the nature and extent of the firsthand dissemination of [one’s]
11 statements’” is viewed by the California Supreme Court “as critical to the purposes of Section 631[.]”
12 *Javier v. Assurance IQ, LLC*, 2023 WL 114225, at *6 (N.D. Cal. Jan. 5, 2023) (Breyer, J.) (quoting
13 *Ribas v. Clark*, 38 Cal. 3d 355, 361 (1985)); *Ribas*, 38 Cal. 3d at 360-61 (“a substantial distinction has
14 been recognized between the secondhand repetition of the contents of a conversation and its
15 simultaneous dissemination to an unannounced second auditor, whether that auditor be a person or
16 mechanical device”). “[U]nder Section 631, it has always mattered who is holding the tape
17 recorder[.]” *Javier*, 2023 WL 114225, at *6. Compliance with CIPA is easy, and most website
18 operators comply by conspicuously warning visitors if their conversations are being recorded,
19 intercepted, or eavesdropped upon.¹

20 12. Unlike most companies, Defendant *ignores* CIPA. Instead, Defendant enables and
21 allows a third party that has no corporate affiliation with Defendant to intercept and eavesdrop on all
22 such conversations. Why? Because, as one industry expert notes, “Live chat transcripts are the gold
23 mines of customer service. At your fingertips, you have valuable customer insight to make informed
24 business decisions. . . .*When people are chatting, you have direct access to their exact pain points.*”

25
26 ¹ [https://www.leechtishman.com/insights/blog/the-california-invasion-of-privacy-act-californias-](https://www.leechtishman.com/insights/blog/the-california-invasion-of-privacy-act-californias-wiretap-act/)
27 [wiretap-act/](https://www.leechtishman.com/insights/blog/the-california-invasion-of-privacy-act-californias-wiretap-act/) (“[C]ompliance [with CIPA] is not difficult. A business must take certain steps, as part of
28 its privacy program, to ensure that *any time the business is gathering*, either automatically, or *with a*
chat feature, personal data of a consumer/website visitor, that it obtains valid consent consistent
with the holdings and determinations of the courts interpreting CIPA and other applicable Data
Privacy laws.”) (last visited July 2023) (emphasis added).

1 See <https://www.ravience.co/post/improve-marketing-roi-live-chat-transcripts> (last visited May 16,
2 2023) (emphasis added).

3 13. Defendant's actions are not incidental to facilitating e-commerce, nor are they
4 undertaken in the ordinary course of business. To the contrary, as noted above, Defendant's actions
5 violate industry norms and the legitimate expectations of consumers.

6 14. To enable the wiretapping and eavesdropping, Defendant has allowed a third party
7 called "Kustomer" to covertly embed code into Defendant's chat feature. Kustomer is hereafter
8 referred to as the "Third Party Spyware Company."

9 15. The secret code is a type of automatic routing software that automatically acquires and
10 transmits user chat communications to the Third Party Spyware Company without any active input
11 from either Defendant's employees, agents, or human representatives or the Third Party Spyware
12 Company's employees, agents, or human representatives. Third Party Spyware Company acquired
13 website visitors' chat communications by rerouting them to computer servers that it owns, controls,
14 and maintains. The secret code enables and allows the Third Party Spyware Company to secretly
15 intercept in real time, eavesdrop upon, and store transcripts of Defendant's chat communications with
16 unsuspecting website visitors – even when such conversations are private and personal. Defendant
17 neither informs visitors of this conduct nor obtains their consent to these intrusions.

18 16. One might reasonably wonder why a Third Party Spyware Company would be
19 interested in intercepting and recording the website chat interactions between Defendant and
20 unsuspecting visitors to Defendant's Website. As shown below, it all about money.

21 17. The Third Party Spyware Company's chat software is "integrated" with Meta, Inc.'s
22 subsidiaries like Facebook and WhatsApp. (Integration allows various software sub-systems to share
23 data to operate as a unified system). According to Bloomberg.com, this is all part of Meta's secret
24 "*plan to profit from private chats.*" See [https://www.bloomberg.com/news/articles/2022-02-15/meta-](https://www.bloomberg.com/news/articles/2022-02-15/meta-closes-1-billion-kustomer-deal-after-regulatory-review)
25 [closes-1-billion-kustomer-deal-after-regulatory-review](https://www.bloomberg.com/news/articles/2022-02-15/meta-closes-1-billion-kustomer-deal-after-regulatory-review) (last downloaded July 2023).

26 18. How does it work? **First**, Meta identifies "user interests" by monitoring a collection of
27 "offsite" user activity such as website visits and interactions (including private chat communications
28 between Defendant and visitors) and by "integrating" its software with the Third Party Spyware

Company's software. **Second**, Defendant has secretly installed the Facebook "pixel" software on its website – a tool widely regarded as spyware – that allows both Defendant and Meta/Facebook to track activities on Defendant's website, including interaction with the chat feature.² **Third**, armed with detailed information about "user interests" and what they chat with Defendant about, Meta/Facebook generates revenue by selling targeted advertising space on its social media platforms. **Fourth and finally**, after the chat transcripts intercepted by the Third Party Spyware Company are provided to Meta/Facebook through integration and via the Facebook pixel spyware, Meta/Facebook and others bombard the unsuspecting website visitors with targeted advertising based upon the user's website visits and chat interactions.

19. Through the preceding acts, Meta's subsidiary, Kustomer, Inc. can freely boast that it will "Transform your support center into a profit generator by bulk messaging specific customer segments based on your unique data . . . to reengage dissatisfied customers." See <https://www.kustomer.com/product/customer-service/> (last downloaded July 2023). Indeed, all of the schemers – Defendant, the Third Party Spyware Company, and Meta – all profit from secretly exploiting the private chat data through targeted social media advertising because "*Targeted advertising allows brands to send different messaging to different consumers based on what the brand knows about the customer. The better a brand can demonstrate that it understands what its customers want and need, the more likely customers respond to advertising and engage with the brand. Social media targeting helps brands leverage consumers' behavior on the web, search engines, and social media sites to present ads that reflect consumer interests.*"³

20. The Third Party Spyware Company does more than merely provide a storage function for Defendant regarding Website users' chat communications with Defendant. Third Party Spyware Company uses its record of Website users' interaction with Defendant's chat feature for purposes other

² See <https://www.facebook.com/gpa/blog/the-facebook-pixel#:~:text=The%20Facebook%20pixel%20is%20a,people%20take%20on%20your%20website> (last downloaded July 2023) (The Facebook pixel is a piece of code for your website that lets you measure, optimize and build audiences for your ad campaigns. You can think of this as an analytics tool that allows you to measure the effectiveness of your advertising by understanding the actions people take on your website.").

³ See <https://www.adroll.com/blog/what-is-targeted-advertising#:~:text=Targeted%20advertising%20allows%20brands%20to,and%20engage%20with%20the%20brand> (last visited July 2023).

1 than storage including data analytics and marketing/advertising to consumers. In addition, Third Party
2 Spyware Company has the capability to use its record of Website users' interaction with Defendant's
3 chat feature for purposes other than storage including data analytics and marketing/advertising to
4 consumers. The Third Party Spyware Company's exploitation, monetization, use of, and interaction
5 with the data it gathers through the chat feature on Defendant's Website in real time makes it a third
6 party under Section 631(a) as opposed to a party.

7 21. Given the nature of Defendant's business, Plaintiff and other visitors have shared
8 personal and confidential data and personally identifying information with Defendant via the Website
9 chat feature.

10 22. Within the last year, Plaintiff visited Defendant's Website. Plaintiff used a smart phone
11 (a cellular telephone with integrated computers to enable web browsing). As such, Plaintiff's
12 conversations with Defendant were transmitted from "cellular radio telephones" as defined by CIPA.

13 23. By definition, Defendant's chat communications from its Website are transmitted to
14 website visitors by either cellular telephony or landline telephony. See
15 <https://www.britannica.com/technology/Internet> ("How does the Internet work?") ("*The Internet works*
16 *through a series of networks that connect devices around the world through telephone lines.*") (last
17 visited July 2023).

18 24. Defendant did not inform Plaintiff or Class members that Defendant was secretly
19 allowing, aiding, and abetting the Third Party Spyware Company to intercept and eavesdrop on the
20 conversations during transmission, or that the Third Party Spyware Company provided data from such
21 transcripts to Meta through "integration" with Meta software.

22 25. Defendant did not obtain Plaintiff's or the Class members' express or implied consent
23 for the preceding intrusions, nor did Plaintiff or Class members know at the time of the conversations
24 of Defendant's conduct.

25 **CLASS ALLEGATIONS**

26 26. Plaintiff brings this action individually and on behalf of all others similarly situated (the
27 "Class") defined as follows:
28

1 All persons within the state of California who: (1) communicated with
2 Defendant via the chat feature on Defendant's Website; and (2) whose
3 communications were recorded and/or eavesdropped upon without prior
4 consent.

5 27. NUMEROSITY: Plaintiff does not know the number of Class members but believes the
6 number to be in the thousands, if not more. The exact identities of Class members may be ascertained
7 by the records maintained by Defendant.

8 28. COMMONALITY: Common questions of fact and law exist as to all Class members,
9 and predominate over any questions affecting only individual members of the Class. Such common
10 legal and factual questions, which do not vary between Class members, and which may be determined
11 without reference to the individual circumstances of any Class member, include but are not limited to
12 the following:

- 13 a. Whether Defendant aided and abetted a third party in eavesdropping on such
14 communications;
- 15 b. Whether Plaintiff and Class members are entitled to statutory penalties; and
- 16 c. Whether Class members are entitled to injunctive relief.

17 29. TYPICALITY: As a person who visited Defendant's Website and whose electronic
18 communication was recorded, intercepted and eavesdropped upon, Plaintiff is asserting claims that are
19 typical of the Class.

20 30. ADEQUACY: Plaintiff will fairly and adequately protect the interests of the members
21 of The Class. Plaintiff has retained attorneys experienced in the class action litigation. All individuals
22 with interests that are actually or potentially adverse to or in conflict with the class or whose inclusion
23 would otherwise be improper are excluded.

24 31. SUPERIORITY: A class action is superior to other available methods of adjudication
25 because individual litigation of the claims of all Class members is impracticable and inefficient. Even
26 if every Class member could afford individual litigation, the court system could not. It would be
27 unduly burdensome to the courts in which individual litigation of numerous cases would proceed.

28 **FIRST CAUSE OF ACTION**

Violations of the California Invasion of Privacy Act

Cal. Penal Code § 631

32. “Any person who, by means of any machine, instrument, or contrivance, or in any other manner [i] intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or [2] who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state, or [3] who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or [iv] who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section is punishable by a fine” (quoting Cal. Penal Code § 631(a)). ***Here, Defendant violates the third prong, as set forth above, by “aiding, abetting, and conspiring” with both the Third Party Spyware Company and Meta/Facebook to wiretap, intercept, eavesdrop upon, learn, share, and monetize the contents of Defendant’s chat conversations.***

33. Section 631 of the California Penal Code applies to internet communications and thus applies to Plaintiff’s and the Class’s electronic communications with Defendant’s Website. “Though written in terms of wiretapping, Section 631(a) applies to Internet communications. It makes liable anyone who ‘reads, or attempts to read, or to learn the contents’ of a communication ‘without the consent of all parties to the communication.’ *Javier v. Assurance IQ, LLC*, 2022 WL 1744107, at *1 (9th Cir. 2022); *Yoon*, 549 F. Supp. 3d at 1080 (“Courts agree ... that CIPA § 631 applies to communications conducted over the internet.”) (citing *Matera v. Google Inc.*, 2016 WL 8200619, at *18 (N.D. Cal. Aug. 12, 2016) (Koh, J.) (holding that second clause of section 631(a) “encompasses email communications, which pass over wires, lines, or cables”)); *In re Google Inc. Gmail Litig.*, 2013 WL 5423918, at *21 (N.D. Cal. Sept. 26, 2013) (Koh, J.) (“the Court finds that

1 section 631 of CIPA applies to emails”); *In re Google Assistant Privacy Litig.*, 457 F. Supp. 3d 797,
2 826 (N.D. Cal. 2020) (Labson Freeman, J.).

3 34. The Third Party Spyware Company’s software embedded on Defendant’s Website to
4 record and eavesdrop upon the Class’s communications qualifies as a “machine, instrument,
5 contrivance, or ... other manner” used to engage in the prohibited conduct alleged herein. *See In re*
6 *Facebook Internet Tracking Litig.*, 140 F. Supp. 3d 922, 937 (N.D. Cal. 2015) (stating that “***it is***
7 ***undeniable that a computer may qualify as a ‘machine’***” within the meaning of section 631(a))
8 (emphasis added), *aff’d in part and rev’d in part on other grounds*, 956 F.3d 589 (9th Cir. 2020).

9 35. At all relevant times, Defendant intentionally caused the internet communication
10 between Plaintiff and Class Members with Defendant’s Website to be recorded. Defendant also aided
11 and abetted, agreed with, employed, or conspired with at least one third party to wiretap and/or
12 eavesdrop upon such conversations during transmission and in real time by voluntarily embedding the
13 software code for Third Party Software Company’s software on Defendant’s Website.

14 36. Defendant knows that Third-Party Spyware Company, through software, captures the
15 electronic communications of visitors to Defendant’s Website, and pays Third-Party Software
16 Company to conduct these activities.

17 37. Plaintiff and Class Members did not expressly or impliedly consent to any of
18 Defendant’s or Third Party Spyware Company’s actions.

19 38. A materially identical line of cases is currently pending before the Honorable Sunshine
20 S. Sykes in the Central District of California. *See Arisha Byars v. The Goodyear Tire and Rubber Co.*,
21 Case No. 5:22-cv-01358-SSS-KK (The “Goodyear Action” or the “Lead Action”); *Miguel Licea v.*
22 *Old Navy, LLC*, Case No. 5:22-cv-01413-SSS-SP (The “Old Navy Action”); *Sonya Valenzuela v.*
23 *M.A.C. Cosmetics Inc.*, Case No. 5:22-cv-01360-SSS-KK (The “M.A.C. Action”); *Annette Cody v.*
24 *Boscovs, Inc.*, Case No. 8:22-cv-01434-SSS (The “Boscovs Action”); *Annette Cody v. LaCoste USA*,
25 Case No. 8:23-cv-00235-SSS (“The LaCoste Action”); *Arisha Byars v. Macys, Inc.*, Case No. 5:23-
26 cv-00456-SSS-KK (The “Macys Action”); *Miguel Licea v. Timex.com, Inc.*, Case No. 5:23-cv-00691-
27 SSS-KK (The “Timex Action”); *Annette Cody v. Skullcandy, Inc.*, Case No. 2:23-cv-03356-SSS-KK
28 (The “Skullcandy Action”); *Annette Cody v. P.C. Richard and Son Service Company, Inc.*, Case No.

2:23-cv-03438-SSS-KK (The “P.C. Richard Action”); *Arisha Byars v. Sephora USA Inc.*, Case No. 5:23-cv-00883-SSS-KK (The “Sephora Action”) and *Sonya Valenzuela et al v. Build-A-Bear Workshop, Inc.*, Case Number: 2:23-cv-05162-SSS-KK.

39. In the lead action pending in the Central District, Judge Sykes recently held that the above-described allegations state viable claims for violations of section 631(a) of CIPA. *See Byars v. The Goodyear Tire & Rubber Co.*, No. 5:22-cv-01358-SSS-KKx, 2023 WL 1788553, at *4 (C.D. Cal. Feb. 3, 2023) (Sykes, J.) (“*Byars contends that Goodyear, using a third-party service, “intercepts in real time” a website visitors’ chat conversation. . . . Byars alleges that, using the chat conversation, website visitors share sensitive personal information. . . . Because Byars has pled sufficient facts to show the contents of the communications and that the communications were intercepted, Byars has sufficiently stated a claim under § 631(a).*”) (emphasis added).

40. Defendant’s conduct constitutes numerous discrete violations of Cal. Penal Code § 631(a), entitling Plaintiff and/or Class Members to injunctive relief and statutory damages.

SECOND CAUSE OF ACTION

Violations of the California Invasion of Privacy Act

Cal. Penal Code § 632.7

41. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

42. Section 632.7 of California’s Penal Code imposes liability upon anyone “who, without the consent of all parties to a communication, intercepts or receives and intentionally records, or assists in the interception or reception and intentional recordation of, a communication transmitted between two cellular radio telephones, a cellular radio telephone and a landline telephone, two cordless telephones, a cordless telephone and a landline telephone, or a cordless telephone and a cellular radio telephone.”

43. Plaintiff and the class members communicated with Defendant using telephony subject to the mandates and prohibitions of Section 632.7.

44. Defendant’s communication from the chat feature on its Website is transmitted via telephony subject to the mandates and prohibitions of Section 632.7.

1 45. As set forth above, Defendant recorded telephony communication without the consent
2 of all parties to the communication in violation of Section 632.7.

3 46. As set forth above, Defendant also aided and abetted a third party in the interception,
4 reception, and/or intentional recordation of telephony communication in violation of Section 632.7.

5 47. In the Lead Action pending in the Central District, Judge Sykes held that the above-
6 described allegations state viable claims for violations of section 632.7 of CIPA. *See Byars v. The*
7 *Goodyear Tire & Rubber Co.*, No. 5:22-cv-01358, 2023 WL 1788553, at *5 (C.D. Cal. Feb. 3, 2023)
8 (Sykes, J.) (“*Byars’ alleged communication with Goodyear occurred via Goodyear’s chat feature on*
9 *its website. Byars accessed Goodyear’s website using her smartphone. As smartphones are cellular*
10 *phones with web capabilities, Byars’ smartphone falls within the cellular phone category. . . . Because*
11 *Byars’ contends that users of Goodyear’s website “share highly sensitive personal data” via*
12 *Goodyear’s chat feature, Byars has sufficiently alleged that website users had a reasonable*
13 *expectation of privacy and therefore the communications fall within the scope of § 632.7.”) (emphasis*
14 *added and internal citations omitted).*

15 48. Defendant’s conduct constitutes numerous discrete violations of Cal. Penal Code §
16 632.7, entitling Plaintiff and/or Class members to injunctive relief and statutory damages.

17 **THIRD CAUSE OF ACTION**

18 **CALIFORNIA INVASION OF PRIVACY**

19 49. Article I, § 1 of the California Constitution provides, “All people are by nature free and
20 independent and have inalienable rights. Among those are enjoying and defending life and liberty,
21 acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and
22 privacy.”

23 50. The phrase “and privacy” was added by an initiative adopted by California voters on
24 November 7, 1972 (the Privacy Initiative). The Privacy Initiative created a private right of action
25 against nongovernmental entities for invasions of privacy.

26 51. The California Supreme Court has explained that one of the principal “mischiefs” to
27 which the Privacy Initiative was directed was “the overbroad collection and retention of unnecessary
28

1 personal information by government and business interests.” *White v. Davis*, 13 Cal.3d 757, 775 (Cal.
2 1975).

3 52. Defendant’s conduct in secretly recording and sharing the above-referenced
4 information with a spyware company violates Plaintiff’s right to privacy.

5 53. Defendant’s actions constitute a serious invasion of privacy in that they violate several
6 state laws; disclosed sensitive personal information to third parties; and facilitated the disclosure of
7 Plaintiff’s information by third parties who did not have legal access to their personal information.

8 54. Defendant acted with oppression, fraud, or malice in invading Plaintiff’s privacy.

9 55. Plaintiff has been damaged by Defendant’s invasion of privacy and is entitled to just
10 compensation in the form of actual and punitive damages.

11 **FOURTH CAUSE OF ACTION**

12 **INTRUSION UPON SECLUSION**

13 56. A claim for intrusion upon seclusion requires (1) intrusion into a private place,
14 conversation, or matter; and (2) in a manner highly offensive to a reasonable person.

15 57. Defendant intentionally intruded upon Plaintiff’s solitude or seclusion by the above-
16 referenced actions.

17 58. As set forth above, the right to online privacy is both actionable and expected by
18 consumers. As such, Defendant’s actions were highly offensive to all reasonable persons.

19 59. None of Defendant’s actions were authorized by Plaintiff.

20 60. Defendant violated state criminal and civil laws designed to protect individual privacy
21 and against theft.

22 61. It is highly offensive to a reasonable person for Defendant to record and share
23 Plaintiff’s conversations.

24 62. Defendant has acted with oppression, fraud, or malice.

25 63. Plaintiff is entitled to just compensation in the form of actual damages and punitive
26 damages under this cause of action.


27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for the following relief against Defendant:

1. An order certifying the Class, naming Plaintiff as the representative of the Class and Plaintiff's attorneys as Class counsel;
2. An order declaring Defendant's conduct violates the above statutes and common laws;
3. An order of judgment in favor of Plaintiff and the Class and against Defendant on the causes of action asserted herein;
4. An order enjoining Defendant's conduct as alleged herein and any other injunctive relief that the Court finds proper;
5. Actual, statutory, and punitive damages; and
6. All other relief that would be just and proper as a matter of law or equity, as determined by the Court.

Dated: July 14, 2023

PACIFIC TRIAL ATTORNEYS, APC

By: 
Scott. J. Ferrell
Attorneys for Plaintiff

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Scott J. Ferrell (Bar #202091) PACIFIC TRIAL ATTORNEYS, A Professional Corporation 4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660 TELEPHONE NO.: (949) 706-6464 FAX NO.: ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W Santa Ana Blvd MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center		
CASE NAME: Valenzuela, et al. v. Homage, LLC		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 30-2023-01336826-CU-MT-CXC JUDGE: Judge William Claster DEPT: CX104

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input checked="" type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Four (4)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 14, 2023

Scott J. Ferrell

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

HOMAGE, LLC, an Ohio entity d/b/a HOMAGE.COM,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

SONYA VALENZUELA, individually and on behalf of all others
similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is: **CIVIL COMPLEX CENTER**
(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
751 W Santa Ana Blvd, Santa Ana, CA 92701

CASE NUMBER:
(Número del Caso):

30-2023-01336826-CU-MT-CXC

Judge William Claster

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Scott J. Ferrell (Bar # 202091)

PACIFIC TRIAL ATTORNEYS, APC

4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660

DATE:

(Fecha) 07/14/2023

DAVID H. YAMASAKI, Clerk of the Court

Clerk, by

(Secretario)

S. Juarez

Phone No.: (949) 706-6464

S. Juarez

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):